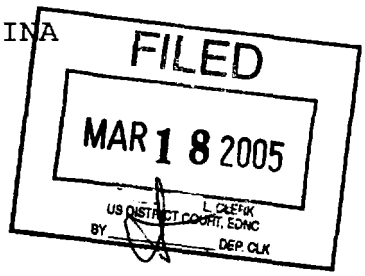
IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
NORTHERN DIVISION
NO. 2:04-CV-30-BO(1)



WILLIAM DARDEN,	)	
	)	
Plaintiff,	)	
	)	
v.	)	DEFENDANT'S MEMORANDUM OF LAW
	)	IN OPPOSITION TO PLAINTIFF'S
	)	MOTION FOR SUMMARY JUDGMENT
	)	
	)	
MARYBETH PETERS,	)	
REGISTER OF COPYRIGHTS,	)	
	)	
Defendant.	)	
	)	

The Defendant, the United States of America, by and through the United States Attorney for the Eastern District of North Carolina, files this Reply in Opposition to Plaintiff's Motion for Summary Judgment, pursuant to Rule 56 of the Federal Rules of Civil Procedure.

In this case, the Court must review the Register's decision to refuse to register Plaintiff's two works, AppraisersDOTcom and Maps for AppraisersDOTcom, to determine whether that refusal was arbitrary, capricious or an abuse of discretion, based upon the Administrative Record before the Copyright Office. The Register's decision is reasonable since Plaintiff's works are clearly not copyrightable. Defendant, therefore, is entitled to judgment as a matter of law. Likewise, granting Plaintiff's Motion for Summary Judgment would be contrary to law.

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ANALYSIS

I. The Copyright Office's Rejection of Plaintiff's Works Is a Reasonable Exercise of Its Discretion

A. Standard of Review

Plaintiff asserts that this Court should review Plaintiff's application for registration *de novo*. This assertion is contrary to the principles of judicial review under the Administrative Procedures Act (APA). "*De novo* review is unwarranted . . . since the court must focus on administrative action which was clearly documented prior to the start of the litigation." National Center for Preservation Law v. Landrieu, 496 F.Supp. 716, 724 (D.S.C. 1980) (citations omitted) (relying upon Citizens to Preserve Overton Park, Inc. v. Volpe, 401 U.S. 402 (1971)). Moreover, the standard of review of a refusal to register under the APA is a deferential "abuse of discretion" one. In applying this standard, the Supreme Court has held that "a court may not substitute its own construction of a statutory provision for a reasonable interpretation made by the administrator of an agency." Chevron U.S.A., Inc. v. Natural Resources Defense Council, 467 U.S. 837, 844 (1984).

In determining whether to register a work, the Copyright Office applies copyright law to the facts before it, and is vested with a fair amount of discretion, reflecting its long-recognized expertise in administering the registration process. Esquire, Inc. v. Ringer, 591 F.2d 796, 805-06 (D.C. Cir. 1978); see also, Eltra

Corp. v. Ringer, 579 F.2d 294, 297-98 (4th Cir. 1978). If, as here, the Copyright Office's application of undisputed law to the facts reflected in the record is reasonable, then there is no abuse of discretion.

B. The Copyright Office's Interpretation of the Statutory Requirement of Originality Is Reasonable and Entitled to Deference

Citing 17 U.S.C. §§ 101-103, Plaintiff implies that the Copyright Office's interpretations are not entitled to deference because the Copyright Office wrongly interpreted the plain meaning of the statute when it refused to register his works. He states that Congress "unambiguously set forth [in the statute] what is copyrightable." Plaintiff's Mem. in Supp. of Mot. for Summ. J. (Pl. Mem.), at 7. While the Copyright Office does not dispute that copyright law extends protection to maps that are original works of authorship, the statute does not directly address the question of what constitutes originality -- the issue in dispute here. To interpret originality, courts have relied on principles of constitutional law and construction because the authority for Congress to provide copyright protection is derived from the United States Constitution, Art. I, § 8, cl.8. While the standards for determining when the statutory requirement of originality is met are not, themselves, set forth in the statute, there are some well-settled judicial guidelines for determining whether a work satisfies this requirement.

Maps may be protected; as one commentator stated: "It is no doubt true that most of the early cases dealing with map copyright referred to the requirement of original effort in exploring, surveying, making inquiries, and drafting the map solely on the basis of one own's investigations." Robert A. Gorman, Copyright Protection for the Collection and Representation of Facts, 76 Harv. L. Rev. 1569, 1572 (1963). More recently, the Supreme Court has clarified that merely expending time preparing materials based on facts or information already in the public domain is in itself not enough to support a copyright. See Feist Pub., Inc. v. Rural Tel. Serv. Co., 499 U.S. 340 (1991).

In examining maps that are based on pre-existing census maps, the Copyright Office must, after Feist, look for some minimal creativity in the expression contained in the maps. See 37 C.F.R. § 202.10(a) (a graphic or pictorial work must exhibit some creativity in its delineation or form).

1. Copyright Office Practices Incorporate Feist Principles for Originality

Feist is a landmark case on the meaning of originality, particularly for compilations of public domain elements. Consistent with Feist and other judicial precedents, Copyright Office regulations and practices interpret originality to consist of two components. A work must be original to the author and must have a minimal level of creativity. See Feist, 499 U.S. at 345.

Plaintiff naturally emphasizes that Feist requires a very low level of creativity to satisfy the originality requirement. See Pl. Mem. at 7-8. While that is indisputable, the basis of the Court's decision was that there are works in which the "creative spark is utterly lacking or so trivial as to be virtually nonexistent." 499 U.S. at 359. Plaintiff ignores this latter principle.

In Feist, the Court ruled that white pages listing telephone numbers in alphabetical order by name of resident did not meet the minimum standards for copyright protection. See 499 U.S. at 363. It characterized the arrangement as "typical," "an age-old practice, firmly rooted in tradition and so commonplace that it has come to be expected as a manner of course." Id. Such works are incapable of sustaining copyright protection. See id. at 359 (citing Nimmer on Copyright, 2.01[B]). The Court observed that "[a]s a constitutional matter, copyright protects only those constituent elements of a work that possess more than a *de minimis* quantum of creativity." Id. at 363. A work that reflects an obvious arrangement fails to meet the low standard of minimum creativity required for copyrightability. See id. at 362-363. The Supreme Court characterized the work at issue in Feist, the alphabetical listing of resident's numbers in a telephone directory, as "garden variety . . . devoid of even the slightest trace of creativity." Id. at 362.

Written guidelines for Copyright Office examiners who routinely review applications for registration incorporate the principles for originality elucidated by the Supreme Court in Feist. Even prior to Feist, based on earlier case law, those practices required works to have more than a *de minimis* amount of authorship. See Compendium II, Compendium of Copyright Office Practices (1984), Chapter 100 (detailed guidelines for examination procedures).[1] With respect to pictorial, graphic and sculptural works, Compendium II states that this requirement is not met by the combination of a few standard symbols or mere coloration. See Compendium II, § 503.02(a) at 500-3 (1984); see also Def.'s Mem. in Supp. of Mot. for Summ. J. at 14.

2. Copyright Office Practices Incorporate the Feist Standard for Compilations

Copyright Office regulations clarify what subject matter is not copyrightable as a matter of public policy, including "[w]ords and short phrases such as names, titles, and slogans; familiar symbols or designs; mere variations of typographic ornamentation, lettering or coloring; mere listing of ingredients or contents." See 37 C.F.R. § 202.1(a). Moreover, facts are not subject to copyright protection. These exceptions to copyright protection are the basic building blocks for creative works that must remain in the public domain, available to all. Permitting them to be

[1] Copies of the cited pages of Compendium II are attached hereto.

copyrighted would impede the constitutional goals that underlie Congress's authority to establish copyright protection. See Art. I, § 8, cl. 8. "The primary objective of copyright is not to reward the labor of authors, but '[t]o promote the Progress of Science and useful Arts.'" Feist, 499 U.S. at 349.

Feist is particularly instructive in its elucidation of the appropriate analysis for determining whether compilations of public domain elements satisfy the requirement for creative authorship. Works based on public domain elements may be copyrightable as compilations if there is some distinguishable element in their selection, coordination and arrangement that reflects choice and authorship that is not so obvious or so minor that the "creative spark is utterly lacking or so trivial as to be nonexistent." Id. at 358-359; see also 17 U.S.C. § 101 (definitions of "compilation" and "derivative work").

For this compilation analysis, the Copyright Office considers the organization, arrangement or selection of works as a whole. See Compendium II, § 625.02 at 600-141 (1988). As discussed below, the Copyright Office applied the Feist standard for compilations here.

C. Employing the Same Standards for Maps as Applied by Courts, the Copyright Office Was Reasonable in Refusing Registration

The Copyright Office standard for determining whether there is sufficient creativity, more than *de minimis*, in a map to support a

copyright registration is the same as for all other works and the same as that applied by courts. Three examples of courts applying this standard to maps, cited by plaintiff, are Albert Sparaco v. Lawler, Matusky, Skelly Engineers LLP, 303 F.3d 460 (2d Cir. 2002), Hodge Mason Maps, Inc. v. Montgomery Data, Inc., 967 F.2d 135 (5th Cir. 1992) and Streetwise Maps, Inc. v. Vandam, Inc., 159 F.3d 739 (2d Cir. 1998).

In Albert Sparaco, an infringement suit involving a copyrighted site plan, the court emphasized that protection is not available for work expended to discover facts included in a map, often referred to as "sweat of the brow." It further noted:

> [C]onsiderable skill and originality can be exercised by a mapmaker in the setting forth of unprotected information--in the selection or elimination of detail, the size, shape, and density of informative legends, the establishment of conventions relating to color or design to represent topographical or other features, and many other details of presentation.

303 F.3d at 467 (citations omitted).

Plaintiff's work, Maps for AppraisersDOTcom (hereafter, "Maps") does not contain evidence of more than a *de minimis* amount of creativity. The few elements present in Maps are basic designs, added to preexisting census maps[2], and call-outs, that are commonplace. So are the selection, coordination and arrangement. United States v Hamilton, 583 F2d 448 , 451 (9th Cir. 1978)

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[2] Plaintiff admits that his maps employ preexisting census maps. (AR 33-34).

(citations omitted) (". . .it is well-settled that copyright of a map does not give the author an exclusive right to the coloring, lettering, symbols and key used in delineating boundaries of and locations within the territory depicted."). Plaintiff has made no selection, but has depicted all of the states and all of the counties. Moreover, Plaintiff has presented them in their usual placement on maps and when listed, they appear alphabetically. Plaintiff states that his maps only "labeled, numbered or called out certain counties on the state maps." Pl. Mem. at 11. He argues that the identification of some states or counties through callouts, using numbers or names, is evidence of sufficient creativity for compilation authorship. See id; (AR 22-23).

Defendant does not dispute that Plaintiff spent many hours preparing Maps. However, the labeling or numbering to call out certain geographical locations lacks sufficient creativity for copyright registration. As to selection, Plaintiff included all states in the United States and all counties in each state, which is an obvious, mechanical choice. By including all, he did not make any distinctions among them.

Also, it is apparent from a visual inspection of the deposit submitted for Maps that the states and counties that are called out are too small to otherwise identify. The areas selected for identification simply do not have enough space for their names to be physically placed on top of them, as is done with the rest of

the states and counties. This is a mechanical choice dictated by the physical limitations of certain states and counties relative to the rest, not by the author's creative judgment.

When the Office considered the labeling, numbering or call outs in the work as a whole, it found that the elements used to identify geographical locations in Maps were typical, common choices that are standard in mapmaking. In its written refusal to register Plaintiff's Maps, the Office described the placement and arrangement of these elements as format and layout which are not subject to copyright protection. (AR 29).

In Hodge Mason Maps, the court held that Mason's maps possessed sufficient creativity in both the selection, coordination and arrangement of facts and in the pictorial and graphic works. Mason obtained information about land surveys, land grants, tracts and various topographical features from a variety of sources that he selected. He exercised extensive selection and judgment in order to position the counties and locations of property lines which had been interpreted differently by other mapmakers who relied on different sources. See 967 F.2d at 139-41 & n.10. Here, Plaintiff's maps lack the modicum of creativity required to transform mere selection into copyrightable expression. See id. at 141 (citing Feist, 499 U.S. at 363-64). As discussed, Plaintiff's selection of all states and all counties means that there was no

selection and its selection of counties to be called out is based on spacing choices that are no more than commonplace and typical.

In Streetwise Maps, Inc. v. Vandam, Inc., an infringement suit, the court compared the parties' maps by focusing on the overall manner in which Streetwise selected, coordinated and arranged the expressive elements, including color, to convey the information. The court determined that Streetwise's maps possessed sufficient creativity in the selection, coordination and arrangement of the facts depicted and also their pictorial and graphic elements, although it also held there was no infringement of those protected elements. 159 F.3d at 748. Similarly, here the Copyright Office examined Plaintiff's works as a whole and determined that the elements of these works, which incorporated preexisting materials, had not been "selected, coordinated, or arranged *in such a way* that the resulting work as a whole constitutes an original work of authorship." (AR 8, citing Feist, 499 U.S. at 356).

In the above cases, the courts analyzed the overall manner in which expressive elements were used to convey information, through selection, coordination and arrangement, as well as, through the pictorial and graphic elements that were used. By contrast, Plaintiff's maps fall far short. The additions that he claims are copyrightable amount to little more than layout and format of preexisting political boundaries, a few city name placements and

some *de minimis* graphical authorship. See Compendium II at § 202.02(j). Even the addition of the labeling and call-outs, essentially name placements, lack the creative and original authorship necessary to support a copyightable compilation. See Hamilton, 583 F.2d at 452 n.5 (citations omitted)(noting that "copying the outline of the United States and the boundaries of each state," or the "selection of principal cites" will not support a copyright). Nor is the format and layout of text on the map susceptible to copyright protection. See Perris v. Hexamer, 99 U.S. 674, 676 (1878) (disavowing copyright protection for " the form of the characters they employ to express their ideas upon the face of the map . . . and the form of type they select to print . . . .") The fact that Plaintiff chose the color blue for the maps' background and white color for the names and chose the size of the font used on names of states and counties may represent "sweat of the brow," but it is too trivial to support a copyright.

Plaintiff relies on Streetwise Maps to argue that the color in his maps is copyrightable. See Pl. Mem. at 8. As discussed *supra*, in Streetwise, the court considered color in comparing the overall look of the parties' works, as part of the infringement analysis. While the copyrightability analysis may also consider the use of color in so far as it creates images, a copyright claim cannot be based solely on the use or selection of color. See Compendium II, Chapter 500, § 506.03. Moreover, the maps in Streetwise had a

color scheme involving several colors to illustrate various features. See 159 F.3d at 748. Plaintiff's maps, on the other hand, are largely monochrome, specifically, blue. The Office found Plaintiff's use of color to indicate the borders of states and counties to be entirely typical, even when considering the work as a whole. Its conclusion was reasonable based upon the works presented.

D. Plaintiff's Claim that the Copyright Office Should Have Produced Prior Designs for Comparison Is Ill-Founded

Plaintiff argues that the Copyright Office did not produce evidence that the maps and designs in his works lacked the requisite creativity, stating that the Office "did not provide any illustrations or evidence to demonstrate why it determined that Mr. Darden's stylized maps were 'entirely typical.'" Pl. Mem. at 3, 6 and 12. The Copyright Office does not make findings of fact, although it reserves the right to request explanations of statements made by applicants, in appropriate cases. See Compendium II, Chapter 100, § 108.05. The Office's review of a claim for registration is confined to the information provided in an application and making a determination of whether that claim is sufficient. However, the Office does take administrative notice of matters of general knowledge. See id. at § 108.05(b). Therefore, the burden is on applicants to provide evidence that works satisfy the minimum requirement for creativity.

Furthermore, the examination for copyrightability does not include a comparison to other works, unlike the other fields of intellectual property, patents and trademarks. Originality in copyright law is not judged by a comparison to prior works. See Compendium II at § 108.03. Therefore, the Copyright Office is prohibited from considering evidence based on comparisons with other works. As stated, however, the Copyright Office takes administrative notice of matters of general knowledge. Each individual claim or work is considered on a case by case basis, without regard to any other specific work.

E. Copyright Office Did Not Base Its Refusal on an Evaluation of the Merit of Plaintiff's Works

Relying on Rockford Map Publishers, Inc. v. Directory Service Co. of Colorado, Inc., 768 F.2d 145, 148 (7th Cir. 1985), Plaintiff implies that the Copyright Office has wrongly refused to register his works because it did a subjective assessment of the value or importance of his works. On the contrary, Copyright Office examination procedures do not evaluate the aesthetic or commercial merits of works as part of its originality analysis. Compendium II instructs examiners that the aesthetic, commercial or symbolic merit of a work is not relevant to an examination for originality. See Compendium II at § 503.01. A work may be highly valued for those things and, yet, not be copyrightable and *vice versa*. This legal interpretation is consistent with Bleistein v. Donaldson Lithographing Company, 188 U.S. 239 (1903); see also, Paul

Morelli Design v. Tiffany & Co., 200 F. Supp.2d 482, 488-489 (E.D. Pa. 2002); Homer Laughlin China Co. v. Oman, 1991 WL 154540, 22 U.S.P.Q.2d 1074, 1076 (D.D.C. 1991).

In sum, the Copyright Office analyzed plaintiff's works using the same legal standards employed by courts, and arrived at a reasonable conclusion. Plaintiff admits that the maps that form the basis for his claim to copyright in both works were taken from pre-existing Census maps. The Copyright Office's judgment that the additions made by plaintiff fail to show more than a *de minimus* amount of creativity is consistent with case law and the Copyright Office's long standing interpretations of the statute. Thus, the Copyright Office did not abuse its discretion in refusing to register plaintiff's works.

CONCLUSION

For the foregoing reasons, Defendant's motion for summary judgment should be granted and Plaintiff's motion for summary judgment should be denied.

Respectfully submitted this 18th day of March, 2005.

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CERTIFICATE OF SERVICE

I do hereby certify that I have this 18th day of March, 2005, served a copy of the foregoing upon the below listed party by placing a copy of the same in the U.S. Mails, addressed as follows:

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Excerpts From

COMPENDIUM II

COMPENDIUM OF COPYRIGHT OFFICE PRACTICES

Mark Lillo
Feb. 13, 1985

COMPENDIUM II

COMPENDIUM

OF

COPYRIGHT OFFICE PRACTICES

Under the Copyright Law Which
Became Fully Effective on
January 1, 1978, Including
Title 17 of the United States
Code and Amendments Thereto

COPYRIGHT OFFICE
THE LIBRARY OF CONGRESS
WASHINGTON, D. C. 20559

1984

P R E F A C E

This Compendium (designated as Compendium II) reflects Copyright Office practices under the copyright law which became fully effective on January 1, 1978, including Title 17 of the United States Code and amendments thereof.

An earlier Compendium (now called Compendium I) was issued a number of years ago to reflect Copyright Office practices under the Copyright Act of 1909, as amended. Compendium I applies to Copyright Office actions, in situations which it covers, where the provisions of the Copyright Act of 1909, as amended, are dispositive.

The Compendium is a manual intended primarily for the use of the staff of the Copyright Office as a general guide to its examining and related practices. It is not a book of rules that is meant to provide a ready-made answer to all questions that arise. Any new case presented to the Office may require special analysis.

The practices of the Copyright Office are subject to constant review and modification in the light of new experience and continuing reappraisal. Accordingly, additions, deletions, and other amendments will be made from time to time. The Copyright Office will provide an up-to-date copy of the Compendium for public inspection and copying. The Office will likewise maintain a separate record of all material withdrawn from the Compendium as superseded.

Section 201.1(b)(3) of the Copyright Office Regulations, Title 37 of the Code of Federal Regulations, which are authorized under section 702 of the current copyright law, provides for a compendium of Office practices.

Copies of Compendium II are available for purchase from the Superintendent of Documents, United States Government Printing Office, as a looseleaf publication; amendments and supplements will be published by the Superintendent of Documents in the form of additional or replacement pages as such changes are made.

Copies of the earlier Compendium (Compendium I) may be purchased from the National Technical Information Service, United States Department of Commerce.

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[1984]

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Chapter 100

BASIC POLICIES

Outline of Topics

CHAPTER 100

BASIC POLICIES

101 Basic policies. Set forth below are the policies upon which the examining and related practices of the Copyright Office are based.

102 The constitutional provision. The Constitution of the United States provides, in Article 1, Section 8, that the "Congress shall have Power . . . To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries."

103 The copyright law. The U.S. copyright law is based upon the above provision of the Constitution, especially as it relates to the "Writings" of "Authors." The current copyright law is the Copyright Act which became fully effective on January 1, 1978, including Title 17 of the United States Code, and amendments thereof. The previous law was the Copyright Act of 1909, as amended.

104 The Copyright Office. The copyright law provides that all administrative functions and duties which it imposes are, except as otherwise specified, the responsibility of the Register of Copyrights as director of the Copyright Office of the Library of Congress and that the Register, together with subordinate officers and employees of the Office, shall be appointed by the Librarian of Congress and shall act under the Librarian's general direction and supervision. See 17 U.S.C. 701(a). The Copyright Office is a department of the Library of Congress, and the Register of Copyrights is also Assistant Librarian of Congress for Copyright Services. In addition to its principal function, which is the performance of all duties relating to the registration of copyrights, the policies and practices of the Copyright Office are also designed to promote the overall objectives of the Library of Congress. See the Library of Congress Regulations, LCR 215.

105 Statutory authority for examination. Section 410(a) of the current law specifies that when, "after examination, the Register determines that . . . the material deposited constitutes copyrightable subject matter and that the other legal and formal requirements . . . have been met, the Register shall register the claim and issue to the applicant a certificate of registration under the seal of the Copyright Office." Section 410(b) provides that in "any case in which the Register of Copyrights determines that . . . the material deposited does not constitute copyrightable subject matter or that the claim is invalid for any other reason, the Register shall refuse registration and shall notify the applicant in writing of the reasons for such refusal." Section 205(a) states that any "transfer of copyright ownership or other document pertaining to a copyright may be recorded in the Copyright Office." These provisions, together with other pertinent sections of the law, constitute the statutory basis for the examining and related practices of the Copyright Office.

106 Copyright Office Regulations. The Register of Copyrights is authorized by section 702 of the copyright law to establish, subject to the approval of the Librarian of Congress, regulations not inconsistent with law for the administration of the functions and duties made the responsibility of of the Register. The Copyright Office Regulations, including those relating to examination, registration, and recordation, are embodied in Title 37 of the Code of Federal Regulations.

107 The establishment, maintenance, and availability of a public record. The foregoing constitute the basis for the establishment and maintenance by the Copyright Office of a reliable and useful public record which includes all registrations of copyright claims and recordations of documents pertaining to copyrights. This record is made available to the public by the Copyright Office through (1) the issuance of certificates of copyright registration which attest that registration

107 The establishment, maintenance, and availability of a public record. (cont'd)

has been made and which may constitute prima facie evidence of the validity of the copyright and of the facts stated in the certificate, (2) the publication of the Catalogs of Copyright Entries, which provide the basic facts of registration for all registered works, (3) the issuance of certificates certifying that transfers of copyright ownership or other documents pertaining to copyrights have been recorded, (4) the issuance of certified copies of applications, deposit copies, documents, and various other materials submitted to the Copyright Office in connection with registrations and recordations, (5) the maintenance in the Copyright Office of the Copyright Card Catalog, for public use in searching for completed registrations and recorded documents, and (6) the providing of a Copyright Office reference service to furnish, by means of written search reports, the facts of registration and recordation contained in the files of the Office. This system depends, for its reliability and usefulness, primarily upon the examination process.

108 The examination process. The examination process, which is the principal means of creating and maintaining a reliable and useful public record, includes the examination of (1) the copies or phonorecords of works submitted for registration, (2) the application for registration, (3) all other material and correspondence submitted with the claim, and (4) copies of any Copyright Office correspondence relating to the registration of the claim.

108.01 Nature of examination. Examination is made to determine (1) whether or not the work for which registration is sought constitutes copyrightable subject matter and (2) whether or not the other legal and formal requirements have been met, including those set forth in the Copyright Office Regulations and in the Compendium of Copyright Office Practices.

108 The examination process. (cont'd)

108.02 Scope of examination. The Copyright Office registers claims to copyright whenever the requirements of the law appear to be met. It does not grant copyrights.

108.03 Comparison of works. The Copyright Office does not generally make comparisons of copyright deposits to determine whether or not particular material has already been registered.

108.04 Extent of copyright claims. In general the registration of a claim to copyright is considered to extend to all the component parts of the work which are the subject matter of copyright and in which the applicant has the right to claim on the basis of the particular application under consideration. Where part of the work was previously published or was covered by a previous registration, the copyright claim as reflected in the application should generally be limited to the new material covered by the claim being registered. Also, where a work contains material which is unpublished and unregistered, and where the claim does not extend to such material, the application should reflect this limitation in the scope of the registration. Moreover, the coverage of a registration cannot, subject to certain exceptions, extend beyond the material deposited to make that registration.

108.05 Factual determinations. In connection with its examining and related activities, the Copyright Office does not ordinarily make findings of fact with respect to publication or any other thing done outside the Copyright Office.

108.05(a) Requests for explanation. The Copyright Office reserves the right to request, in appropriate cases, explanations of statements made by an applicant.

108 The examination process. (cont'd)

108.05 Factual determinations. (cont'd)

108.05(b) Administrative notice. The Copyright Office may take notice of matters of general knowledge. It may use such knowledge as the basis for questioning applications that appear to contain or be based upon inaccurate or erroneous information.

108.06 Adverse claims. The sequence of receipt in the Copyright Office of separate claims by two or more applicants plays no part in determining registrability. Where the Copyright Office is aware that two or more persons or organizations are adversely claiming copyright in, and are seeking separate registrations for, the same material, the Office may inform each applicant of the existence of the other claim(s) and inquire concerning the basis of each claim. All such claims will be registered if they are reasserted and if they are in order as confirmed by the response to the Copyright Office inquiry. The Copyright Office does not conduct "opposition" or "interference" proceedings such as those provided by the Federal trademark and patent laws.

108.07 The rule of doubt. The Copyright Office will register the claim even though there is a reasonable doubt about the ultimate action which might be taken under the same circumstances by an appropriate court with respect to whether (1) the material deposited for registration constitutes copyrightable subject matter or (2) the other legal and formal requirements of the statute have been met.

108.08 Cautionary or warning letters. When registration is made under the rule of doubt, the Copyright Office will ordinarily send a letter to the applicant cautioning that the claim may not be valid and stating the reason; and such letter may warn, where appropriate, that the

108 The examination process. (cont'd)

108.08 Cautionary or warning letters. (cont'd)

problem may exist for future works and point out how it can be avoided. The Office may send the letter and withhold the application until specifically authorized by the applicant to make registration, or it may make registration before sending the letter.

108.09 Refusal to register. The Copyright Office will not register a claim where (1) the material deposited does not constitute copyrightable subject matter or (2) the claim is invalid for any other reason. See also section 108.07 above concerning the rule of doubt. The Office will notify the applicant in writing of the reasons for such refusal.

108.10 Obscene or pornographic works. The Copyright Office will not ordinarily attempt to examine a work to determine whether it contains material that might be considered obscene or pornographic.

108.11 Works containing classified information. When, in examining or processing materials received in the Copyright Office, it is noted that such material contains, or reasonably appears to contain, information classified by the U.S. Government for such reasons as national defense or national security, (1) the appropriate security official of the Library of Congress should be immediately notified through supervisory channels, (2) the material should be held or disposed of in accordance with instructions from that official, and (3) the examination or other processing of the material by the Copyright Office should be suspended until the matter is resolved.

109 Communications between the applicant and the Copyright Office. Communications between the Copyright Office and applicants may be by letter or other written means, by telephone, or by personal interview.

109 Communications between the applicant and the Copyright Office. (cont'd)

109.01 In general. As a general policy the Copyright Office may register claims without communicating with the applicant whenever possible. The Copyright Office will communicate with the applicant before registration only when the claim as a whole is not in substantial compliance with the practices of the Copyright Office as reflected in this Compendium.

109.02 Copyright Office communications. All Copyright Office communications should be clear in meaning, concise in statement, and polite in tone.

109.03 Opinions and advice. Copyright Office communications that result from the examination of claims should be limited to questions concerning registration and related matters. They should conform to the general policy of the Copyright Office by avoiding the expression of opinions or the offer of advice on such matters as the rights of persons in connection with contracts or alleged infringements. Also, there should be no offer or undertaking to resolve disputes concerning conflicting claims to copyright or similar matters. See section 108.06 above, concerning adverse claims.

109.04 One letter concerning more than one application. When more than one application is submitted to the Copyright Office by an applicant in one package, the Office will ordinarily attempt to deal in a single letter with all of those applications which require correspondence, rather than produce a separate letter for each one. Also, the Office may deal in one letter with materials received separately from a single applicant.

109.05 Communications from applicants. The Copyright Office will generally consider all statements and materials submitted by applicants. However, any abusive or scurrilous written materials

109 Communications between the applicant and the Copyright Office. (cont'd)

109.05 Communications from applicants. (cont'd)

directed to the Office or any of its employees will be returned unanswered; see 37 C.F.R. 201.2(c)(4). Similarly, Copyright Office employees will terminate any conversation or interview, if an applicant makes abusive or scurrilous statements, or engages in threatening behavior.

109.06 Languages. The Copyright Office will ordinarily write to applicants only in the English language and will ordinarily conduct conversations and interviews with applicants only in English. As a general rule, the Office is willing to entertain applications and record documents that are in languages other than English, and to deal with correspondence from applicants which is in a language other than English. In special cases, however, the Office may require the submission of an English translation of statements on applications, documents, or correspondence before it takes action.

110 Applicants. The applicant for registration may be the author or other copyright claimant, or the owner of exclusive right(s) in the work. Moreover, a duly authorized agent may apply for registration on behalf of such author, claimant, or owner.

110.01 Minors. The author, claimant, or owner can be a minor, even though State law may regulate or control business dealings involving minors. The Copyright Office will generally accept an application submitted either by a minor or by the minor's parents or guardian, if it is otherwise in order.

110.02 Mental incompetents. The author, claimant, or owner can be a mentally incompetent person. If a committee or guardian has been appointed for a person adjudged to be incompetent, such committee or guardian should generally serve as agent of the applicant.

110 Applicants. (cont'd)

110.03 Prisoners. The author, claimant, or owner can be an inmate of a prison or other penal institution. The Copyright OFfice will generally accept an application submitted by such a person as applicant, if it is otherwise in order.

110.04 Paupers. There is no provision of law which requires or permits the waiver or reduction of the registration fee or any other registration requirement of the copyright law on the grounds that the applicant is a pauper or is otherwise impecunious.

110.05 Agents. Any duly authorized agent may act on behalf of the applicant. The Copyright Office will generally accept the statement of a person that he or she is acting as the agent of the author, claimant, or owner. However, the Office may, in special cases, request such agent to submit documentation showing that he or she is empowered to act for the author, claimant, or owner. Where such author, claimant, or owner is other than a natural person (for example, where a corporate entity is the claimant), the application must be submitted by a natural person acting as agent. The name of a corporate entity or other organization is not acceptable as the signature of the applicant or agent unless it is accompanied by the signature of a natural person authorized to sign on behalf of such entity or organization.

110.06 Attorneys. The Copyright Office does not require that the author, claimant, or owner be represented by an attorney, although the Office may suggest in special cases that the applicant consider seeking the advice of an attorney. No special qualifications or test is imposed on lawyers as a condition to dealing with the Copyright Office.

110 Applicants. (cont'd)

110.07 False representation. The copyright law provides that any person who knowingly makes a false representation of a material fact in an application for registration, or in any written statement filed in connection with an application, shall be guilty of a criminal offense and shall be fined not more than $2,500. See 17 U.S.C. 506(e).

111 Territorial limitations. The U.S. copyright law has no extraterritorial effect in that generally its provisions with respect to infringement extend only to violations occurring in the United States. Since the practices of the Copyright Office spring solely from the U.S. law, ordinarily the Compendium of Copyright Office Practices deals only with U.S. copyright, unless it expressly states otherwise.

112 Recordations and Import Statements. The basic policies set forth above also apply, with some few alterations and exceptions, to the recordation of transfers of copyright ownership and other documents pertaining to copyrights, and to requests for the issuance of Import Statements. See Chapter 1200: MANUFACTURING PROVISIONS, and Chapter 1500: CORRECTIONS AND AMPLIFICATIONS OF COPYRIGHT OFFICE RECORDS; SUPPLEMENTARY REGISTRATIONS.

[END OF CHAPTER 100]

Chapter 500

COPYRIGHTABLE MATTER: PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS

Outline of Topics

[1984]

Chapter 500

COPYRIGHTABLE MATTER: PICTORIAL, GRAPHIC, AND SCULPTURAL WORKS

501 Pictorial, graphic, and sculptural works: in general. The copyright law defines "pictorial, graphic, and sculptural works" as including two-dimensional and three-dimensional works of fine, graphic, and applied art, photographs, prints and art reproductions, maps, globes, charts, technical drawings, diagrams, and models. Such works shall include works of artistic craftsmanship insofar as their form but not their mechanical or utilitarian aspects are concerned; the design of a useful article, as defined in this section, shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. See 17 U.S.C. 101.

501.01 Forms of embodiment. Registrable pictorial, graphic, or sculptural authorship may be embodied in a wide variety of forms. These include works of fine, graphic, and applied art; prints; photographs, holograms, and individual slides; art reproductions; maps, globes, and charts; architectural and technical drawings; diagrams, patterns, models, and the like; and advertisements. Motion pictures, film strips, slide presentations, and other audiovisual works are not "pictorial works" for the purpose of registration.

502 Works of art. These include works of the fine arts, such as paintings, other pictorial works, and sculpture, as well as works of artistic craftsmanship, such as jewelry, glassware, ceramic figurines, table service patterns, wall plaques, grave markers, toys, dolls, stuffed toy animals, models, and the separable artistic features of two-dimensional and three-dimensional useful articles.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. Generally, in order to be entitled to registration, such works must contain original pictorial, graphic, or sculptural authorship. If the work consists entirely of uncopyrightable elements, registration is not authorized. On the other hand, the mere presence of uncopyrightable elements in a work will not prevent registration on the basis of features that are copyrightable under the statute. Thus a design, otherwise original, may be registrable even though it incorporates uncopyrightable standard forms, such as circles and squares.

503.01 Style and artistic merit. The registrability of a work of the traditional fine arts is not affected by the style of the work or the form utilized by the artist. Thus, the form of the work can be representational or abstract, naturalistic or stylized. Likewise, the registrability of a work does not depend upon artistic merit or aesthetic value. For example, a child's drawing may exhibit a very low level of artistic merit and yet be entitled to registration as a pictorial work.

503.02 Copyrightable pictorial, graphic, and sculptural expression. A claim to copyright in a work of the traditional fine arts will be registrable if the work contains at least a certain minimum amount of pictorial, graphic, or sculptural expression owing its origin to the author. If the expression is pictorial, the authorship could be expressed, for example, in the linear contours of a drawing, the assemblage of diverse fragments forming a collage, or the arrangement and juxtaposition of pieces of colored stone in a mosaic portrait. If the expression is sculptural, the authorship could, for example, be expressed by means of carving, cutting, molding, casting, shaping, or otherwise processing the material into a three-dimensional work of sculpture.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(a) Minimal standards: pictorial or graphic material. A certain minimal amount of original creative authorship is essential for registration in Class VA or in any other class. Copyrightability depends upon the presence of creative expression in a work, and not upon aesthetic merit, commercial appeal, or symbolic value. Thus, registration cannot be based upon the simplicity of standard ornamentation such as chevron stripes, the attractiveness of a conventional fleur-de-lys design, or the religious significance of a plain, ordinary cross. Similarly, it is not possible to copyright common geometric figures or shapes such as the hexagon or the ellipse, a standard symbol such as an arrow or a five-pointed star. Likewise, mere coloration cannot support a copyright even though it may enhance the aesthetic appeal or commercial value of a work. For example, it is not possible to copyright a new version of a textile design merely because the colors of red and blue appearing in the design have been replaced by green and yellow, respectively. The same is true of a simple combination of a few standard symbols such as a circle, a star, and a triangle, with minor linear or spatial variations.

Examples:

1) An unpublished design for textile fabric is submitted for registration in Class VA. The design consists of a standard unembellished

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(a) Minimal standards: pictorial or graphic material. (cont'd)

Examples: (cont'd)

1) (cont'd)

character of Chinese calligraphy painted upon horizontally striated grass cloth. Practice: Registration is not authorized in this case. Like typography, calligraphy is not copyrightable as such, notwithstanding the effect achieved by calligraphic brush strokes across a striated surface.

2) An applicant for registration has developed a novelty item consisting of transparently clear plastic sheets bonded together around their periphery, and having a small amount of colored liquid petroleum in the air space between the laminated sheets. Any slight pressure upon the external surface results in the formation of undulating patterns and shapes, no two of which are ever identical. Practice: Since the specific outlines and contours of the patterns and shapes formed by the liquid petroleum do not owe their origin to a human agent, it is not possible to claim copyright in such patterns and shapes. The novelty of the idea embodied in the work and the effects achieved by the action of the petroleum under pressure likewise do not warrant registration.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. The requisite minimal amount of original sculptural authorship necessary for registration in Class VA does not depend upon the aesthetic merit, commercial appeal, or symbolic value of a work. Copyrightability is based upon the creative expression of the author, that is, the manner or way in which the material is formed or fashioned. Thus, registration cannot be based upon standard designs which lack originality, such as common architecture moldings, or the volute used to decorate the capitals of Ionic and Corinthian columns. Similarly, it is not possible to copyright common geometric figures or shapes in three-dimensional form, such as the cone, cube, or sphere. The mere fact that a work of sculpture embodies uncopyrightable elements, such as standard forms of ornamentation or embellishment, will not prevent registration. However, the creative expression capable of supporting copyright must consist of something more than the mere bringing together of two or three standard forms or shapes with minor linear or spatial variations. In no event can registration rest solely upon the fact that an idea, method of operation, plan, or system has been successfully communicated in three-dimensional form. In every case, it is the creative expression of the author which must be able to stand alone as an independent work apart from the general idea which informs it.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. (cont'd)

Examples:

1) Registration in Class VA is requested for a design or model of a table lamp. Cast in plaster of Paris, the design features the head of a horse mounted on an iron horseshoe with toe and heel calks which supports the entire fixture. Electrical wiring is concealed within the plaster casting. Practice: If the head of the horse is original, registration may be considered on that basis. However, the general idea of embellishing a lighting fixture with a work of art is not copyrightable. The same is true of the decorative idea of using a horseshoe as support for a lamp base, regardless of the pleasing effect thereby achieved.

2) A toy manufacturer conceives a novel idea for a toy consisting of multicolored geometrical spheres, cubes, and cylinders of varying sizes. All of these parts or pieces are magnetized, and will adhere to one another when placed in close proximity. Thus, it is possible to construct an indefinite variety of shapes and figures by means of the magnetized parts or pieces. The manufacturer desires to protect the three-dimensional aspects of the toy before publication occurs. He applies to the

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. (cont'd)

Examples: (cont'd)

2) (cont'd)

Copyright Office for registration of a design for an unpublished sculptural work of art. His application Form VA is accompanied by one complete set of magnetized spheres, cubes, and cylinders arranged in a plain box according to size and color. Practice: We will refuse a registration in Class VA based solely upon the unassembled toy, even though its component parts or pieces are potentially capable of being arranged in copyrightable shapes and forms. The general idea of the toy is uncopyrightable, regardless of its novelty or uniqueness.

3) A work described as a "mobile" consists of nine pieces of translucent colored glass each of which is suspended by wire from an overhead rack designed to rotate about a pivot in a horizontal plane. The suspension wires vary in length and no two pieces of glass share the same shape or outline. Registration is sought in Class VA on the basis of the overall effect produced by the play of light upon the suspended glass components of a work which the applicant describes as "three-dimensional." No copyrightable authorship is claimed in the design of the individual pieces

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.02 Copyrightable pictorial, graphic, and sculptural expression. (cont'd)

503.02(b) Minimal standards: sculptural material. (cont'd)

Examples: (cont'd)

3) (cont'd)

of glass. Practice: Registration based upon the cumulative effect produced by the component members of the mobile will be refused. If these members had contained copyrightable authorship, registration could have been considered on the basis of the two-dimensional design features displayed by the pieces of glass.

503.03 Works not capable of supporting a copyright claim. Claims to copyright in the following works cannot be registered in the Copyright Office:

503.03(a) Works not originated by a human author. In order to be entitled to copyright registration, a work must be the product of human authorship. Works produced by mechanical processes or random selection without any contribution by a human author are not registrable. Thus, a linoleum floor covering featuring a multicolored pebble design which was produced by a mechanical process in unrepeatable, random patterns, is not registrable. Similarly, a work owing its form to the forces of nature and lacking human authorship is not registrable; thus, for example, a piece of driftwood even if polished and mounted is not registrable.

503 Registration requirements for drawings, paintings, other pictorial works, and sculpture. (cont'd)

503.03 Works not capable of supporting a copyright claim. (cont'd)

503.03(b) Works containing insufficient expression. No registration is possible where the work consists solely of elements which are incapable of supporting a copyright claim. Uncopyrightable elements include common geometric figures or symbols, such as a hexagon, an arrow, or a five-pointed star, as pointed out in section 503.02(a) above.

503.03(c) Ideas and concepts. Mere ideas and concepts cannot support a copyright claim. In order to be registrable, a work must contain original copyrightable expression. Thus, for example, neither the idea of folding a five-pointed star in a manner that enables it to stand upright, nor the star so folded is registrable.

504 Registration requirements for two-dimensional useful articles, three-dimensional works of artistic craftsmanship, and models. The registrability of two-dimensional useful articles is determined by the presence of at least a certain minimum amount of pictorial or graphic authorship. For three-dimensional works of artistic craftsmanship falling outside the definition of useful articles, such as jewelry, toys, and wall plaques, the authorship may be either sculptural or pictorial in nature, such as carving, cutting, molding, casting, shaping the work, arranging the elements into an original combination, or decorating the work with pictorial matter. Three-dimensional works of artistic craftsmanship are registrable either in assembled form, or in unassembled component pieces, as for example, an unassembled model airplane.

504 Registration requirements for two-dimensional useful articles, three-dimensional works of artistic craftsmanship, and models. (cont'd)

504.01 Material not subject to copyright. Standard elements, as such, are not registrable. Thus, registration cannot be made for glassware devoid of copyrightable ornamentation, or for fabric designs consisting only of polka dots. Moreover, the mechanical or utilitarian aspects of a three-dimensional work of applied art are not subject to copyright protection. Hence, the serrated edge of a knife could not be the basis of a copyright registration.

504.02 Examples. The following are examples of the principles governing the registrability of such works:

1) A textile design consisting of nothing more than polka dots is not registrable. However, a representational image produced by the use of dots is registrable.

2) A jeweled pin consisting of three parallel rows of stones is not registrable, while a pin consisting of a sculpted bee is registrable.

3) A copyright claim in an original stuffed toy lion is registrable, while a plain red cushion shaped as a five-pointed star is not.

505 Registration requirements for the shapes of three-dimensional useful articles. Under the definition of "pictorial, graphic, and sculptural works" in the copyright law, the "design of a useful article" is copyrightable only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article. See 17 U.S.C. 101.

505 Registration requirements for the shapes of three-dimensional useful articles. (cont'd)

505.01 Definition of useful article. A "useful article" is an article having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information. An article that is normally a part of a useful article is considered a "useful article." 17 U.S.C. 101. Examples of useful articles include automobiles, boats, household appliances, furniture, work tools, garments, and the like.

505.02 Separability test. Registration of claims to copyright in three-dimensional useful articles can be considered only on the basis of separately identifiable pictorial, graphic, or sculptural features which are capable of independent existence apart from the shape of the useful article. Determination of separability may be made on either a conceptual or physical basis.

505.03 Separability test: conceptual basis. Conceptual separability means that the pictorial, graphic, or sculptural features, while physically inseparable by ordinary means from the utilitarian item, are nevertheless clearly recognizable as a pictorial, graphic, or sculptural work which can be visualized on paper, for example, or as free-standing sculpture, as another example, independent of the shape of the useful article, i.e., the artistic features can be imagined separately and independently from the useful article without destroying the basic shape of the useful article. The artistic features and the useful article could both exist side by side and be perceived as fully realized, separate works -- one an artistic work and the other a useful article. Thus, carving on the back of a chair, or pictorial matter engraved on a glass vase, could be considered for registration. The test of conceptual separability, however, is not met by merely

505 Registration requirements for the shapes of three-dimensional useful articles. (cont'd)

505.03 Separability test: conceptual basis. (cont'd)

analogizing the general shape of a useful article to works of modern sculpture, since the alleged "artistic features" and the useful article cannot be perceived as having separate, independent existences. The shape of the alleged "artistic features" and of the useful article are one and the same, or differ in minor ways; any differences are de minimis. The mere fact that certain features are nonfunctional or could have been designed differently is irrelevant under the statutory definition of pictorial, graphic, and sculptural works. Thus, the fact that a lighting fixture might resemble abstract sculpture would not transform the lighting fixture into a copyrightable work.

505.04 Separability test: physical basis. The physical separability test derives from the principle that a copyrightable work of sculpture which is later incorporated into a useful article retains its copyright protection. Examples of works meeting the physical separability test include a sculptured lamp base of a Balinese dancer, or a pencil sharpener shaped like an antique car. However, since the overall shape of a useful article is not copyrightable, the test of physical separability is not met by the mere fact that the housing of a useful article is detachable from the working parts of the article.

505.05 Separability test: factors not relevant in determining registrability. In applying the test of separability, the following are not relevant considerations: 1) the aesthetic value of the design, 2) the fact that the shape could be designed differently, or 3) the amount of work which went into the

505 Registration requirements for the shapes of three-dimensional useful articles. (cont'd)

505.05 Separability test: factors not relevent in determining registrability. (cont'd)

making of the design. Thus, the mere fact that a famous designer produces a uniquely shaped food processor does not render the design of the food processor copyrightable.

506 Prints. "Prints" include a wide variety of pictorial prints and illustrations produced by means of lithography, photoengraving or other printing processes, including reproductions of representational and abstract designs and color reproductions of photographic prints. Examples of such works include greeting cards, picture postcards, posters, decals, stationery, table place mats, advertisements, various kinds of wrappers, billboards, shopping bags, and labels.

506.01 Registration requirements. In order to be entitled to registration as a print, the work must contain at least a certain minimum amount of original pictorial or graphic authorship.

506.02 Pictorial or graphic material. Registration is appropriate for original pictorial or graphic material, such as illustrations and representational or abstract design, as well as photographs reproduced in color by lithography, photoengraving, or other printing processes. Although the copyrightability of such material does not depend upon artistic merit or aesthetic value, the material must contain at least a certain minimum amount of original pictorial or graphic expression to be eligible for registration.

506.03 Uncopyrightable elements. In determining the registrability of a print, the copyright claim cannot be based solely upon mere variations of typographic ornamentation, lettering, or coloring. Likewise, the arrangement of type on a printed page cannot support a copyright claim. However,

506 Prints. (cont'd)

506.03 Uncopyrightable elements. (cont'd)

if the type is so arranged as to produce a pictorial representation, the resulting image is registrable. Thus, an advertisement which utilized lettering to achieve a pictorial representation of a person can be registered.

507 Reproductions of pictorial, graphic, or sculptural works. Material comprising "reproductions of pictorial, graphic, or sculptural works" include reproductions of existing works of art. Examples of such reproductions are photoengravings, collotypes, silk-screen prints, mezzotints, and three-dimensional reproductions of sculpture.

507.01 Registration requirements. In order to be registrable, an art reproduction must contain at least a certain minimum amount of original authorship. This authorship may consist of drawing, lithography, photoengraving, etching, original sculpturing or molding, and the like. For example, a reproduction of Rodin's "Hand of God" achieved through sculpturing a miniature version of the original is registrable.

507.02 Derivative works. Art reproductions are derivative works because, by their nature, they are based on preexisting works. Accordingly, a statement identifying the preexisting artistic work and indicating the nature of the authorship in the reproduction should be given in the appropriate spaces on the application form. However, in those cases where the author and claimant of the reproduction are also the author and claimant of the original work of art that has been reproduced, and the original work has not been previously registered or published, registration should be made as an original pictorial, graphic, or sculptural work.

507 Reproductions of pictorial, graphic, or sculptural works. (cont'd)

507.03 Reproductions not capable of supporting a registration. Claims to copyright in the following works cannot be registered in the Copyright Office:

507.03(a) Underlying work not a pictorial, graphic, or sculptural work. Where the underlying work is not a pictorial, graphic, or sculptural work, no registration is possible on the basis of reproduction authorship. For example, a lithographic reproduction of a letter of the alphabet is not registrable.

507.03(b) Mechanical or photomechanical processes. Reproductions made through the mere operation of mechanical or photomechanical processes are not registrable. For example, a photocopy of an original pen and ink drawing is not registrable as an art reproduction.

508 Photographs, holograms, and individual slides. Works considered for registration on the basis of photographic authorship include still photographic prints, holograms, and individual slides.

508.01 Registration requirements. To be entitled to copyright registration, a photograph, hologram, or slide must contain at least a certain minimum amount of original expression. Generally, original photographic or holographic authorship depends on the variety and number of the elements involved in the composition of the photograph or hologram. However, the nature of the thing depicted or the subject of the photograph or hologram, as distinguished from its composition or arrangement, is not regarded as a copyrightable element. Original photographic composition capable of supporting registration may include such elements as time and light exposure, camera angle or perspective achieved, deployment of light and shadow from natural or artificial light sources, and the arrangement or disposition of persons, scenery, or other subjects depicted in the photograph.

508 Photographs, holograms, and individual slides. (cont'd)

508.01 Registration requirements. (cont'd)

In the case of holography, original authorship depends largely upon the selection, arrangement, and disposition of scene and object.

508.02 Uncopyrightable works. Where images are produced through the operation of mechanical or photomechanical processes with no appreciable element of artistic expression, the work is not registrable.

Examples:

1) A microfilm merely reproducing public domain textual matter is not registrable.

2) The photocopy of a public domain pictorial work is not registrable.

509 Maps. The term "map" refers to cartographic representations of area. Common examples include terrestrial maps and atlases, marine charts, celestial maps, and such three-dimensional works as globes and relief models.

509.01 Registration requirements. To be registrable, a map must contain at least a certain minimum amount of original cartographic material. Examples of original cartographic material include drawings or pictorial representations of area based on original surveying or carto-graphic field work and compilations resulting from the original selection and arrangement of essentially cartographic features, such as roads, lakes or rivers, cities, political or geographic boundaries, and the like.

509.02 Compilations and derivative works. The preparation of many maps involves the use of previously published source material to a significant degree, and the copyrightable

509 Maps. (cont'd)

509.02 Compilations and derivative works. (cont'd)

authorship, therefore, is generally based upon elements such as additional compilation and drawing. Additional authorship of this kind may include cartographic representations such as new roads, historical landmarks, or zoning boundaries. Where any substantial portion of the work submitted for registration includes previously published or registered material, or material that is in the public domain, statements describing both the preexisting material as well as the new copyrightable authorship should be given at the appropriate spaces on the application form. See Chapter 700: APPLICATIONS AND FEES.

509.03 Elements not capable of supporting a copyright. A mere reprint of public domain or previously published material is not registrable. Likewise, a claim based upon an obvious selection and arrangement of materials is not registrable. For example, an outline map of the United States containing nothing more than the names of the state capitals does not contain the necessary authorship to support registration.

510 Scientific works: architectural and technical drawings and models. Material comprising scientific works includes architectural blueprints, mechanical drawings, engineering diagrams, astronomical charts, anatomical models, scientific and architectural models, and similar works.

510.01 Registration requirements. In order to be entitled to registration, architectural and technical drawings must contain at least a certain minimum amount of original graphic or pictorial matter. A scientific or architectural model must contain at least a certain minimum amount of original sculptural material.

510 Scientific works: architectural and technical drawings and models. (cont'd)

510.02 Uncopyrightable works. Claims to copyright in the following works cannot be registered in the Copyright Office:

510.02(a) Devices. Devices and similar articles, designed for computing and measuring, cannot be registered. Common examples of such works include slide rules, wheel dials, and nomograms that contain insufficient original literary or pictorial material. The printed material of which a device usually consists (lines, numbers, symbols, calibrations, and their arrangement) cannot be copyrighted, because this material is necessarily dictated by the uncopyrightable idea, principle, formula, or standard of measurement involved.

510.02(b) Blank forms. Blank forms and similar works which are designed for recording information and do not in themselves convey information, cannot be registered. Common examples include: forms calibrated for use in conjunction with a machine or device, report forms, graph paper, account books, scorecards, order forms, vouchers, and the like. See 37 C.F.R. 202.1(c).

510.03 Ideas, processes, or systems. Copyright protection does not extend to ideas, processes, or systems. Scientific or technical works are registrable only if they contain the requisite original copyrightable expression. The following are not protectible by copyright and do not offer a basis for copyright registration: 1) ideas or procedures for doing, making, or building things; 2) scientific or technical discoveries or methods; 3) business operations or procedures; 4) mathematical principles; or 5) any other concept, process, method of operation, or plan of action. See 17 U.S.C. 102(b).

510 Scientific works: architectural and technical drawings and models. (cont'd)

510.04 Subjects depicted. Where registration is sought for a scientific or technical work, the application should describe only the authorship contained in the work and not bear any statements which suggest that registration extends to the subjects depicted. Thus, the application for registration of a claim to copyright in an architectural drawing of a building should contain no statements which imply that the registration extends to the building. See 17 U.S.C. 113(b).

[END OF CHAPTER 500]

625 Compilations. The subject matter of copyright includes compilations that as a whole constitute original works of authorship. The copyright in a compilation is independent of any copyright protection in the preexisting material. See 17 U.S.C. 101, 102, and 103.

625.01 Compilations: appropriate application form. Registration of a claim in a compilation should be made on the application form most appropriate to the preexisting material. However, the Copyright Office may accept a compilation claim on another one of the application forms for basic registration, provided that the form has some relationship to the category of material compiled.

625.02 Compilations: registrable. A compilation is registrable if its organization, arrangement, or selection as a whole constitute an original work of authorship.

Examples:

1) Two Forms PA, each claiming in "Compilation" are received with a folio and a phonorecord containing the same 15 musical selections. The order of the selections, however, is substantially different. The applications will be accepted.

2) Form SR claiming on "Compilation" is submitted for a recording of a new album entitled "Johnny Mash: Live at Billy Jack's." The Copyright Office will question whether the work contains an original compilation of previously recorded sounds since a live performance indicates that the sounds were recorded in a single continuous session.

625 Compilations. (cont'd)

625.03 Compilations: unregistrable. Where it appears that the compilation does not constitute an original work of authorship or that it is not subject to copyright protection for any other reason, the Copyright Office will refuse to register the claim.

Examples:

1) A compilation of two songs on a 45-rpm disc is submitted for registration. The Copyright Office will refuse to register the claim in a compilation.

2) A previously registered compilation is resubmitted as a new compilation. The authorship statement reads: "Last three selections deleted." The Copyright Office will refuse to register the claim.

3) A claim in compilation is submitted for a feature writer's weekly contribution to "The Times" over a period of six months. The compilation is arranged in chronological order. The Copyright Office will refuse to register the claim in a compilation.

4) Form TX is submitted with the complete published collection of Arthur Conan Doyle's Sherlock Holmes stories arranged chronologically. The Copyright Office will refuse to register the claim in a compilation.

625.03(a) Unregistrable compilations; unlawful employment of preexisting copyrighted material. Protection for a compilation employing preexisting material in which copyright subsists does not extend to any part of the work in which such material has been used unlawfully. See 17 U.S.C.